

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000655-001 DT

03/02/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA

DENISE BOODE

v.

KENNETH COLE RATLIFF (001)

COLBY RYAN KANOUSE

GILBERT MUNICIPAL COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 10CT20755.

Defendant-Appellant Kenneth Cole Ratliff (Defendant) was convicted in Gilbert Municipal Court of driving under the influence, underage drinking and driving, and underage consumption of alcohol. Defendant contends the trial court erred in denying his Motion To Suppress, which alleged the officer did not have reasonable suspicion to stop his vehicle. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

The State filed a Complaint charging Defendant with driving under the influence, A.R.S. § 28-1381(A)(1); underage drinking and driving, A.R.S. § 4-244(34); and underage consumption of alcohol, A.R.S. § 4-244(41). Prior to trial, Defendant filed a Motion To Suppress alleging the officer did not have reasonable suspicion to stop his vehicle.

At the hearing on Defendant's motion, Sergeant Jessie Singer testified he was on duty on October 12, 2010, when he came into contact with Defendant. (R.T. of Mar. 24, 2011, at 3-4.) At 8:50:02 p.m., he received a dispatch advising him a homeowner at 213 East Juniper Avenue called to say there was a black Nissan Titan pick-up truck that had been parked across the street for quite a while with the engine running. (*Id.* at 6, 12.) The homeowner said there were no homes on that side of the street and there was just a wall there, and the light in the truck kept being turned on and off. (*Id.* at 6.) The homeowner said the truck did not look as though it belonged to any house in the neighborhood, and it was strange for a vehicle to be parked there. (*Id.*) Based on his training and experience, Sergeant Singer thought it could have been any of the following: A person waiting there while another person was committing a burglary; a person buying or selling illegal drugs; a person using illegal drugs; or a person having a medical emergency. (*Id.* at 6-8, 15.)

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Sergeant Singer arrived at the location on Juniper Avenue at 8:51:55 p.m. (R.T. of Mar. 24, 2011, at 12.) As he approached the location heading east on Juniper Avenue, he saw the vehicle coming west toward him. (R.T. of Mar. 24, 2011, at 8.) He said the fact the vehicle was now moving did not change his concern about a possible medical emergency because a person could have a medical emergency and yet drive a vehicle. (*Id.* at 14.) He turned on his emergency lights and made a u-turn, and followed the vehicle. (*Id.* at 12–13.) The vehicle pulled into a Circle K at Gilbert Road, and Sergeant Singer approached the driver, whom he identified as Defendant. (*Id.* at 13.)

After the trial court heard the testimony and the arguments of counsel, it ruled the State had established Sergeant Singer was acting within the community caretaker function, and therefore denied Defendant’s motion to suppress. (R.T. of Mar. 24, 2011, at 28.) On June 2, 2011, Defendant submitted the matter on the record, and the trial court found Defendant guilty of all three counts. On July 7, 2011, the trial court imposed sentence, and on July 11, 2011, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES.

A. *Did the trial court abuse its discretion in finding the officer was engaged in the community caretaker function.*

Defendant contends the trial court abused its discretion in finding the officer was engaged in the community caretaker function. In reviewing a trial court’s ruling on a motion to suppress, an appellate court is to defer to the trial court’s factual determinations, including findings based on a witness’s credibility and the reasonableness of inferences the witness drew, but is to review de novo the trial court’s legal conclusions. *State v. Moody*, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 75, 81 (2004); *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Olm*, 223 Ariz. 429, 224 P.3d 245, ¶ 7 (Ct. App. 2010). Arizona has described the “community caretaker function” as follows:

The “community caretaker” doctrine allows admission of evidence discovered without a warrant when law enforcement engages in “community caretaking functions” intended to promote public safety. Such caretaking functions are lawful with respect to automobiles in part “because of the extensive regulation of motor vehicles by states.” This function justifies a warrantless entry if “the intrusion is suitably circumscribed to serve the exigency which prompted it.” The standard for evaluating the appropriateness of its exercise is reasonableness; the question is whether a “prudent and reasonable officer [would] have perceived a need to act in the proper discharge of his or her community caretaking functions[.]”

State v. Mendoza-Ruiz, 225 Ariz. 473, 240 P.3d 1235, ¶ 8 (Ct. App. 2010) (citations omitted). The court stated the standard as follows:

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The appropriate standard under the community caretaking exception is one of reasonableness: Given the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions? . . . [A]s in other contexts, “in determining whether the officer acted reasonably, due weight must be given not to his unparticularized suspicions or ‘hunches,’ but to the reasonable inferences which he is entitled to draw from the facts in the light of his experience; in other words, he must be able to point to specific and articulable facts from which he concluded that his action was necessary.”

State v. Organ, 225 Ariz. 43, 234 P.3d 611, ¶ 15 (Ct. App. 2010), *quoting People v. Ray*, 21 Cal. 4th 464, 981 P.2d 928, 88 Cal. Rptr. 2d 1 (1999).

In the present matter, the record showed Sergeant Singer knew of the following facts: (1) It was 8:50 at night; (2) the truck was parked where vehicles usually do not park; (3) the truck had been parked there for a while; (4) there were no houses where the truck was parked and only a wall there; (5) the homeowner believed the truck was not from that neighborhood; (6) the homeowner thought it was strange for a vehicle to be parked there; (7) the motor was running; and (8) someone was turning on and off the inside lights. The record thus supports the trial court’s finding that Sergeant Singer knew of specific and articulable facts from which he concluded his action was necessary. Further, when Sergeant Singer contacted Defendant, all he did was inquire about his welfare. Thus, Sergeant Singer’s intrusion was suitably circumscribed to serve the exigency that prompted it.

B. *Did the record show the officer had reasonable suspicion to stop Defendant’s vehicle.*

Although the trial court did not rule on whether Sergeant Singer had reasonable suspicion to stop Defendant’s vehicle, an appellate court is obligated to affirm the trial court when any reasonable view of the facts and law might support the judgment of the trial court, even when the trial court has reached the right result for a different reason. *State v. Canez*, 202 Ariz. 133, 42 P.3d 564, ¶ 51 (2002); *State v. LaGrand*, 153 Ariz. 21, 29, 734 P.2d 563, 571 (1987); *State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984); *State v. Chavez*, 225 Ariz. 442, 239 P.3d 761, ¶ 5 (Ct. App. 2010); *State v. Rumsey*, 225 Ariz. 374, 238 P.3d 642, ¶ 4 (Ct. App. 2010); *State v. Childress*, 222 Ariz. 334, 214 P.3d 422, ¶ 9 (Ct. App. 2009); *State v. Waicelunas*, 138 Ariz. 16, 20, 672 P.2d 968, 972 (Ct. App. 1983). A police officer has reasonable suspicion to detain a person if there are articulable facts for the officer to suspect the person is involved in criminal activity. *State v. Lawson*, 144 Ariz. 547, 551, 698 P.2d 1266, 1270 (1985).

The record supports a conclusion that Sergeant Singer had reasonable suspicion to stop Defendant’s vehicle. In Section A above, this Court has listed the facts known to Sergeant Singer. He testified his experience has shown him it is common for persons to commit a burglary of a home with a person acting as a look-out while waiting in a vehicle on the street with the motor running. (R.T. of Mar. 24, 2011, at 7–8.) He said it is also common for a person to sell drugs by being in a

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vehicle waiting for another person to arrive and do a quick hand-to-hand sale and then drive away. (*Id.* at 7.) The record thus supports the conclusion Sergeant Singer knew of articulable facts that gave him a reasonable suspicion that a person in the truck was involved in criminal activity.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court properly denied Defendant's Motion To Suppress.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Gilbert Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Gilbert Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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